



**Rule(s) Review Checklist Addendum**  
(This form must be filled out electronically.)

**This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.**

All responses should be in **bold** format.

Document(s) Reviewed (include title):

- **WAC 458-61-200 (Apartments)**
- **WAC 458-61-210 (Assignments--Purchasers)**
- **WAC 458-61-225 (Assumption of debt)**
- **WAC 458-61-290 (Contract)**
- **WAC 458-61-370 (Exchanges--Trades)**
- **WAC 458-61-425 (Growing crops)**
- **WAC 458-61-430 (Sale of improvements to land)**
- **WAC 458-61-470 (Irrigation equipment)**
- **WAC 458-61-510 (Leases)**
- **WAC 458-61-540 (Mobile and floating home sales)**
- **WAC 458-61-553 (Nonprofit organizations)**
- **WAC 458-61-555 (Option to purchase)**
- **WAC 458-61-600 (Relocation service)**
- **WAC 458-61-660 (Timber, standing)**

Date last reviewed: **September 1999**

Reviewer: **Ed Ratcliffe**

Date current review completed: **July 10, 2002**

Briefly explain the subject matter of the document(s):

**These rules explain circumstances under which transfers of real property are subject to the real estate excise tax (REET). Many of these rules clarify the measure of tax for specific situations in which the consideration includes something other than cash. For example:**

- **The measure of tax for transfers discussed in WAC 458-61-210 (Assignments—Purchasers) includes any unpaid principal balance due on an assigned real estate contract.**
- **WAC 458-61-225 (Assumption of debt) explains that the combined amount of an assumed debt is included in the measure of tax when the underlying debt is assumed by the grantee.**

**Some of these rules also discuss transfers that in part or in total consist of personal property and explain the retail sales or use tax-reporting responsibilities. For example:**

- **WAC 458-61-430 (Sale of improvements to land) explains that while the REET does not apply to the sale of improvements when those improvements are to be removed**



from the land, the purchaser is subject to the use tax for his or her use of the improvements.

- **WAC 458-61-540 (Mobile and floating home sales)** explains the conditions under which the transfer of a mobile or floating home is subject to the REET or subject to the retail sales or use tax.

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Public requests for review:**

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

**2. Related statutes, interpretive and/or policy statements, court decisions, BTA decisions, and WTDs:** (Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.)

YES	NO	
X		Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
	X	Are there any interpretive or policy statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
X		Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
	X	Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive or policy statement.)



If the answer is "yes" to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

**WAC 458-61-540 (Mobile and floating home sales) should be revised to incorporate chapter 282, Laws of 2001, section 2, which applied the real estate excise tax to "used park model trailers" starting August 1, 2001.**

**WAC 458-61-200 should be revised to address cooperatives. Det. No. 96-168, 17 WTD 308 (1996), explains that the sale of stock in a housing cooperative association that owns the land on which improvements are located is not subject to the REET. This information should be reviewed in light of Firth v. Lu, 103 Wn. App. 267 (Div. I, 2000)(cooperative purchase represents a real property interest subject to the statute of frauds).**

**Det. No. 97-240R, 21 WTD (2002), examines the transfer of real property with both recourse and nonrecourse debt. Transfer was a sale subject to REET even though purchaser agreed to continue making payments upon the recourse liability. WAC 458-61-225 should be revised to incorporate the decision's rationale.**

**Det. No. 99-316, 19 WTD 850 (2000), and Det. 99-316R, 19 WTD 862 (2000), explain that the transfer of leasehold improvements constructed by a commercial lessee is subject to REET. WAC 458-61-430 should be revised to incorporate the reasoning of these determinations.**

**Det. No. 00-122, 20 WTD 461 (2001), explains that the transfer of "right of ways" and utility easements for telecommunication (including the pipeline) is subject to REET. WAC 458-61-430 should be revised to address when and how real estate excise tax applies to utility easements and the transfer of "right of ways" for utilities.**

**Det. No. 99-011R, 19 WTD 423 (2000), explains that the option to purchase consideration turned upon the label of the payment, whether it was for the option or to exercise the option. Although WAC 458-61-555 provides a good discussion of the taxable event for triggering the real estate excise tax, it should provide clearer direction upon how the "selling price" for the property is determined.**

**In BTA 50612-27, Chantry, Inc. v. DOR (1998), the sale of standing timber is described. This decision demonstrates that clarification is needed upon how WAC 458-61-660 applies. The rule should clarify what elements are necessary to establish a sale of standing timber.**

**3. Additional information:** Identify any additional issues (other than those noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

**These rules are generally written in a clear, concise, and effective manner. The following changes or revisions will make these rules even more effective:**

- **The title and references to "apartments" in WAC 458-61-200 (Apartments) is misleading. This rule actually addresses the taxability of condominiums. This information may be expanded to address cooperative housing with the resulting rule entitled "Condominiums and cooperative housing".**



- WAC 458-61-225 (Assumption of Debt) should be revised to incorporate reasoning of 21 WTD 145 (2002) and WAC 458-61-374.
- WAC 458-61-370 (Exchanges-Trades) should be rewritten to coordinate the method of determining value of real property exchanges with WAC 458-61-030 and 080.
- WAC 458-61-430 (Sale of improvements to land) needs to address when improvements are "owned" by the lessee during the term of the leasehold.
- WAC 458-61-510 (Leases) explains that the measure of tax is the true and fair value of property conveyed at the time an option to purchase is exercised. The measure of tax should actually be the total consideration paid.
- WAC 458-61-540 (Mobile and floating home sales) should be revised to address the following:
  - Transfers as trade-in property to mobile home dealers;
  - Transfers of new mobile home units placed on sites by dealers operating as speculative builders; and
  - The transfer of the ownership in a mobile home to a surviving spouse via a death certificate.
- WAC 458-61-555 (Option to purchase) should explain the tax consequences of improvements added by an optionee if the option is later assigned to a third party and the third party pays the original optionee for the improvements.
- WAC 458-61-660 (Timber, standing) should clarify application of tax to sales of standing timber.

**4. Listing of documents reviewed:** The reviewer need identify only those documents that were not listed in the previous review of the rule(s). Use "bullets" with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented:

- Chapter 82.45 RCW (Excise tax on real estate sales)
- Chapter 82.46 RCW (Counties and cities—Excise tax on real estate sales)

To the extent that the following apply to personal property often sold or transferred with real property:

- Chapter 82.08 RCW (Retail sales tax)
- Chapter 82.12 RCW (Use tax)

Ancillary Documents (i.e., ETAs, PTBs, and ADs):

None.

Court Decisions:

- **Firth v. Lu, 103 Wn. App. 267 (Div. I, 2000)**(Agreement to purchase cooperative must meet requirements of a deed to be enforced as the cooperative share is a real property interest subject to the statute of frauds).

Board of Tax Appeals Decisions (BTAs):

- **BTA 50612-27, Chantry, Inc. v. DOR (1998)** - Sale of standing timber is determined by timing of when title is transferred.



Administrative Decisions (e.g., WTDs):

- **Det. No. 96-168, 17 WTD 308 (1998) Sale of stock in a housing cooperative association that owns the land on which improvements are located is not a taxable as a "sale or transfer of improvements constructed upon leased land."**
- **Det. No. 97-240R, 21 WTD (2002) Examines the transfer of real property with recourse and nonrecourse debt. Transaction was a sale subject to REET even though seller agreed to continue making payments upon recourse debt.**
- **Det. No. 99-316, 19 WTD 850 (2000) and Det. 99-316R, 19 WTD 862 (2000) Transfer of leasehold improvements constructed by a commercial lessee is subject to REET.**
- **Det. No. 00-122, 20 WTD 461 (2001) Transfer of "right of ways" and utility easements for telecommunication (including the pipeline) is subject to REET.**
- **Det. No. 99-011R, 19 WTD 423 (2000) Option to purchase subject to REET only upon fee paid to exercise option.**

Attorney General Opinions (AGOs): **none**

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed): **none**

## 5. Review Recommendation:

- |              |   |
|--------------|---|
| <u>  x  </u> | <b>Amend</b>  |
| <u>     </u> | <b>Repeal/Cancel</b> (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.) |
| <u>  x  </u> | <b>Leave as is</b> (Appropriate even if the recommendation is to incorporate the current information into another rule.)                              |
| <u>     </u> | <b>Begin the rule-making process for possible revision.</b> (Applies only when the Department has received a petition to revise a rule.)              |

**Explanation of recommendation:** Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).



The following rules should be revised as explained under section 4, above:

- WAC 458-61-200, to change the term "apartments" to "condominiums." Also consider addressing the application of real estate excise tax to cooperatives as part of this rule;
- WAC 458-61-225, revised to incorporate reasoning of 21 WTD 145 (2002) and WAC 458-61-374;
- WAC 458-61-370, coordinate valuation method with WAC 458-61-030 and 080;
- WAC 458-61-430, to address when improvements are "owned" by the lessee during the term of the leasehold;
- WAC 458-61-510, to explain that the measure of tax is the total consideration paid;
- WAC 458-61-540, to address park model trailers, trade-in property, and mobile units placed on sites by speculative builders;
- WAC 458-61-555, to address the taxability of improvements added by the holder of an option to purchase real property when those improvements are later sold to a third-party; and
- WAC 458-61-660, to clarify the elements needed to determine when real estate excise tax applies to sales of timber for harvesting.

These rules may be retained as is:

- WAC 458-61-210;
- WAC 458-61-290;
- WAC 458-61-425;
- WAC 458-61-470
- WAC 458-61-553; and
- WAC 458-61-600.

When making revisions to any rules contained in chapter 458-61 WAC, the drafter should where appropriate consolidate the information provided in this chapter into fewer but more comprehensive rules.

6. Manager action: Date: \_\_\_\_\_

\_\_\_\_\_ Reviewed and accepted recommendation

Amendment priority:

- \_\_\_\_\_ 1
- \_\_\_\_\_ 2
- \_\_\_\_\_ 3
- \_\_\_\_\_ 4